

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7854 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BANSILAL PANNAJI DAYMA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
Mr. S.P. Dave, AGP for Respondent No. 1
MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 04/12/97

ORAL JUDGEMENT

The petitioner calls in question the legality and validity of the order of his detention, came to be passed on 29th September 1997, by the District Magistrate of Bhavnagar invoking the powers under Section 3(2) of the Prevention of Blackmarketing and Maintenance of Supply of Essential Commodities Act, 1980, so as to deter him from carrying out further activities creating privitation in the market and his malpractices in the business he was

carrying on.

2. The facts which led the petitioner to prefer this application may in brief be stated. In Nirmalnagar area of Bhavnagar city the petitioner is dealing in kerosene obtaining necessary licence. As per the terms and conditions of the licence he had to sell the kerosene to the cardholders, but it was during the visit and inspection of shop found that instead of selling required quota of kerosene to the cardholders, he forging the record and writing false account books, and preparing bogus bill he used to divert kerosene for profiteering purpose, and boosting his black economy. It was also found that by chemical process he changed the contents of the kerosene and converted the same to the inferior quality injurious to the lights or machines or things when used. Necessary equipments for such adulterated chemical process as well as 10 barrels of such kerosene could also be found out. The bogus records were seized by the raiding party. As the kerosene supplied to the petitioner was by chemical process reduced to an inferior quality and diverted to others encouraging profiteering scams and black-economy, the District Magistrate thought that to curb the black-economy and malpractices of the petitioner and to see that the customers are not deprived of their due quota periodically, strict remedial measures against the petitioners were required to be taken. Considering the materials before him and the circumstances in which the petitioner was taking disadvantage it was found that any other measures available in law under general law if resorted to would be found skimpy and the petitioner will be able to take his field again rather than having deterrent effect on him. His detention, passing necessary order, was the only way out to curb his such activities. Consequently, the impugned order of detention came to be passed by the District Magistrate at Bhavnagar on 29th September 1997 pursuant to which the petitioner at present is under detention. By this application under Article 226 of the Constitution of India, the legality and validity of the said order is under challenge.

3. Assailing the order, Mr. Prajapati, the learned advocate representing the petitioner has submitted that though the representation was sent to the Hon'ble Minister, Civil Supply Department at Gandhinagar, the same was not considered at all. With the result the petitioner's right to make effective representation was marred, and his continued detention under the circumstances was not legal. On other grounds also the order is assailed but when the ground of

non-consideration of the representation going to the root of the matter if dealt with, the petition can well be disposed of finally, I do not think it necessary to dwell upon those other grounds, and answer the same, to which both agree.

4. It may be stated that Mr. P.D. Shah, the Under Secretary, Civil Supply & Consumer Affairs Department, Sachivalaya has filed his affidavit wherein he has denied the receipt of representation if at all sent by the petitioner or on behalf of the petitioner. It seems he stated so because of the ignorance of the real fact. The representation was as submitted, sent by registered post. The window slip issued by the post office and the postal acknowledgement signed by the concerned officer in the office of the then Hon'ble Minister of Civil Supply are produced. The said acknowledgement shows that the representation was received by the Clerk of the Hon'ble Minister for Civil Supply. It appears that thereafter the representation was not sent to the Civil Supply & Consumer Affairs Department for consideration, and because of that reason the affidavit denying the receipt of the representation has been filed. The above facts however clearly establish that the representation was made to the Government & was received by the Government.

5. In the case of Harish Pahwa vs. State of U.P. and others AIR 1981 S.C. 1126 the Supreme Court has so far as the question of consideration of representation is concerned has observed as under;

"The representation made by a detenu has to be considered without any delay. The Supreme Court does not look with equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

6. In view of such decision making the law clear, what is expected in the matter is that the authority passing the order must consider the representation without any delay & with utmost expedition. In other words, the representation must be taken on hand for consideration immediately and dealt with continuously until a final decision is taken in the matter and the same is communicated to the detenu. In this case, as stated above, the representation was sent and received by the office of the Hon'ble Minister, Civil Supply, but the same was not considered though it was incumbent upon the Government to consider it immediately till the decision thereon was taken and the detenu was informed about the same. The Department cannot be allowed to say that the authority receiving the representation did not send to it for consideration for the authority or employee in another section or unit or Department is under obligation to forward to the competent authority without any waste of time on his part. If that is not done, what would be the consequence, is made clear by this court in the case of Kanjibhai Harjibhai Rabari v. State of Gujarat & Others - 36(2) [1995 (2)] GLR 1596. While dealing with the like-wise question this court has held that if the representation made by the detenu is not considered by the State Government, the continued detention would become illegal and the detenu will be entitled to liberty. In view of this decision, when in this case as stated earlier the representation is not considered, the right of the petitioner was jeopardised. Consequently, his continued detention became illegal. In the result, the order of detention is required to be quashed and the petitioner is required to be released forthwith.

7. For the aforesaid reasons, the order of detention, being illegal and invalid, is hereby quashed. The petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule accordingly made absolute.

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